

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 9

In the Matter of

NELSON TREE SERVICE, INC.

Employer

and

Case 9-RC-17259

INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL 71

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The Employer, a corporation with a principal office in Dayton, Ohio, is engaged in providing line clearance services for public utilities throughout the United States, including American Electric Power Service Corporation (AEP) in eastern, southern and central Ohio. The

Employer employs approximately 110 to 120 employees in the unit found appropriate. There is no contract currently in effect between the Employer and any labor organization covering any of the petitioned-for employees.

The Petitioner seeks to essentially represent a unit comprised of all tree trimmers and crew leaders employed by the Employer in AEP's Columbus, Ohio administrative region including employees working in and around the vicinity of Newark, Ohio, but excluding permission/ticket employees, customer call runners, office and clerical employees, professional employees, guards and supervisors as defined in the Act. Contrary to the Petitioner, the Employer asserts that the Newark area employees do not possess a sufficient community of interest with the other employees in AEP's Columbus Region to warrant their inclusion in the same unit. Accordingly, the Employer maintains that the unit sought by the Petitioner is inappropriate for purposes of collective bargaining. In this connection, the Employer contends that the petitioned-for employees in the Newark area are covered under a separate service contract with AEP from its other employees in AEP's Columbus Region and are, therefore, separately supervised with differing wages, benefits and other conditions of employment. The Petitioner expressed a willingness to proceed to an election in the event it is determined that the Newark area employees are not appropriately included in the unit.

The Employer is essentially engaged in the performance of vegetation management for public utility companies. Such services include trimming trees to provide adequate clearance for distribution power lines and higher voltage transmission power lines.<sup>1/</sup> In addition, the Employer is responsible for the removal of fallen trees, brush and debris and for spraying with herbicides to kill undesirable brush. The trim work is performed either manually, by trimmers using ropes, or by crews who utilize a bucket truck referred to as a hydraulic lift truck. Manual crews are generally used to perform trimming work when there is insufficient access to permit the work to be performed by a bucket crew. The Employer's bucket crews are typically comprised of a crew leader and a trimmer and its manual crews generally include, in addition to a crew leader, one or two other trimmers. Depending on traffic density, another trimmer may be added to a crew to perform flagging work.<sup>2/</sup> There is no contention or record evidence that the crew leaders are statutory supervisors.

The Employer currently has four separate contracts with AEP for the performance of line clearance services within the State of Ohio for areas serviced by AEP. The Employer also has a separate service contract with AEP covering the performance of line clearing work on transmission lines, which traverse all of the areas serviced by AEP in Ohio. The four area service contracts between the Employer and AEP are the Columbus contract, the Newark/Zanesville contract, the Steubenville/Canton/Wheeling contract and the Portsmouth/Athens/Chillicothe contract. The Columbus service contract, which includes Franklin and Delaware counties in Ohio, is effective from February 1, 1998 through January 31, 1999, with provisions for four

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<sup>1/</sup> The transmission lines are higher voltage lines that go from one power substation to another and the distribution lines are the lines that generally feed into subdivision and neighborhood areas.

<sup>2/</sup> Some municipalities require the Employer to hire off-duty law enforcement personnel to handle flagging duties.

1-year extensions upon mutually acceptable terms. The Newark/Zanesville service contract is effective from March 1, 1997, with the same provisions for four additional 1-year terms. The terms of the other service contracts are not clear from the record and the employees who work in these areas are not involved in this proceeding. At some point in 1998, AEP partially altered its internal administrative structure by placing the Newark area within its Columbus Region. However, AEP did not propose any changes in contract coverage with the Employer at the time of the 1999 reopeners for the Columbus and Newark/Zanesville service contracts. The Newark employees, therefore, continue to receive the wages and benefits that the Employer incorporated into its bid for the Newark/Zanesville contract with AEP.

Mike Hexamer is the Employer's area manager. In this capacity, he is in charge of all the tree crews working on AEP property. The Employer's administrative structure is concomitant with its contractual commitments, resulting in separate lines of supervision for each contract service area reporting to Hexamer. In this connection, General Supervisor Wesley Washington reports directly to Hexamer in the Columbus contract service area. There are six supervisors reporting to Washington and five of the six have responsibility for different geographic areas within the Columbus contract service area. The Employer employs approximately 110 to 120 crew leaders and tree trimmers in the Columbus contract service area.

In the Newark/Zanesville contract service area the Employer utilizes two managers who report directly to Hexamer and an assistant manager. John Gibson is the manager over the Newark area and also holds the title of general supervisor. The other manager is over the Zanesville area. The assistant manager works between the two areas as needed. There are about 40 crew leaders and tree trimmers in the Newark/Zanesville contract service area. The change in AEP's administrative structure did not alter the Employer's supervisory hierarchy or its reporting lines for the Newark area. The employees of the Employer in the remaining contract service areas as well as those working under the transmission contract also have separate lines of supervision with a general supervisor or manager who report directly to Hexamer.

The crew leaders in the Columbus contract service area receive a top rate of pay of \$14.50 an hour, whereas the top rate of pay for Newark/Zanesville crew leaders is about \$11 an hour. Similarly, the tree trimmers in the Columbus contract service area receive a top rate of pay of about \$12.50 an hour and the Newark/Zanesville tree trimmers receive a top rate of about \$9.50 to \$10 an hour. Benefits also differ for employees depending on the contract service area in which they are employed. Thus, tree trimming employees in the Columbus contract service area have an 80/20 health insurance plan, including coverage for eye, dental and prescriptions, with a \$10 co-pay. In contrast, Newark/Zanesville tree trimming employees have a 70/30 health insurance plan without eye, dental or prescription coverage, and they are responsible for an unspecified contribution amount to the premium. Employees in the Columbus area also receive different vacation and holiday benefits from those received by the Newark/Zanesville employees. For example, the Columbus area employees receive about 6 paid holidays and 1 to 2 weeks' paid vacation each year depending on their length of service with the Employer. The Newark/Zanesville employees receive paid vacation/holiday days under an earned paid leave (EPL) program in which all vacation/holiday pay must be earned through perfect attendance. Depending on length of service, an employee earns either 8 or 12 hours' paid leave for each month he or she has perfect attendance.

Employees working in the Columbus area and those in the Newark/Zanesville area may also work different hours. For example, at the time of the hearing the Columbus area employees were working 8-hour days and the Newark/Zanesville employees were working 10-hour days. The record does not disclose whether the then current Newark/Zanesville schedule requires that employees work overtime. There are no permanent or temporary transfers between tree trimming employees in the Columbus area and those in the Newark/Zanesville area. Area Manager Hexamer testified that permanent transfers would occur only if an employee were to permanently move his residence from one area to another and there is no record evidence of this type of transfer having occurred. The tree trimming employees in the different service areas do not interchange or interact except in rare instances when extensive storm damage may require crews from one service area to work in conjunction with crews in another area. In the last year AEP requested that the Employer provide this type of service apparently on only one occasion. Further, it is unclear from the record the extent to which the crews from the different areas actually interact with each other in responding to storm related emergencies.

### **ANALYSIS:**

In reaching my conclusion on the scope of the unit, I am mindful of the fact that "there is nothing in the statute which requires that the unit for bargaining be the *only* appropriate unit, or the *ultimate* unit or the *most* appropriate unit; the Act only requires that the unit be appropriate." *Morand Bros. Beverage Co.*, 91 NLRB 409, 418 (1950). Although it is not dispositive, the unit sought by the petitioning labor organization is always a relevant consideration. *Overnite Transportation Co.*, 322 NLRB 723 (1996); *Lundy Packing Company, Inc.*, 314 NLRB 1042, 1043 (1994). However, the unit requested must be appropriate to insure employees the fullest freedom in exercising the rights guaranteed by the Act. *Morand Bros. Beverage Co.*, supra. I have considered the traditional community of interest criteria in a multi-location setting in determining whether the unit requested by the Petitioner is appropriate for purposes of collective bargaining.

In determining the scope of a unit for collective bargaining, the Board examines the bargaining history; functional integration of operations; the similarity of skills, duties and working conditions of employees; labor relations, supervision and employee interchange. See, *Oklahoma Installation Company*, 305 NLRB 812 (1991); *Dezcon, Inc.*, 295 NLRB 109 (1989); *P.J. Dick Contracting*, 290 NLRB 115 (1988). Here, there is no evidence of any recent bargaining history affecting any of the petitioned-for employees. Employees in the Newark service area apparently possess similar skills and perform similar duties to those in the Columbus service area. However, the employees in the two service areas receive substantially different wages and benefits and work under separate immediate supervision. Although the employees within the Columbus area interchange with each other on a regular basis as do the employees within the Newark/Zanesville area, the employees within individual service areas do not interchange with employees employed in other areas. The only caveat being that there may be limited temporary interchange between tree trimming employees working in different service areas when storm damage creates an emergency situation. With respect to geographical considerations, I note that the city of Newark is roughly equidistant between Columbus and Zanesville.

In considering the appropriateness of a multi-location unit, the Board has long held, consistent with community of interest considerations, that for a unit to be appropriate it must be, "sensible for collective bargaining from the standpoint of geographic considerations or the employer's administrative or operational structure." *State Farm Mutual Automobile Insurance Corporation*, 158 NLRB 925, 930 (1966); cf., *PECO Energy Co.*, 322 NLRB 1074 (1997) (alternative separate units conforming to two of the employer's five strategic business units found appropriate as they were well-defined administrative segments). Based on a careful consideration of the above factors and the entire record, I am convinced that the unit sought by the Petitioner is not appropriate for purposes of collective bargaining. In reaching my conclusion, I note the lack of any significant community of interest between the Newark area tree trimming employees and those in the Columbus area. Indeed, it would appear arbitrary to include the Newark area employees with those employees in the Columbus area inasmuch as the Newark area employees share a far greater community of interest with the Zanesville employees than with the Columbus employees. Thus, it would appear that the smallest appropriate unit including the Newark area employees would require the inclusion of all employees working under the Newark/Zanesville service contract. However, there is no basis for including the Newark employees with those employed in the Employer's Columbus area which is co-extensive with an administrative segment of the Employer's operation. *Southwest Gas Corporation*, 199 NLRB 486 (1972). In reaching my conclusion, I do not find persuasive the fact that the Employer's customer, AEP, now includes the Newark service area as part of its Columbus Region under its internal structure. Indeed, I find the prospect that the Employer's Newark area employees may eventually be grouped with those employees currently working in the Columbus area to be speculative and of insubstantial bearing on the present lack of a community of interest between those two groups of employees.

Based on the foregoing, the entire record and careful consideration of the arguments and positions of the parties at the hearing as well as in the Employer's brief, I find that a unit of the Employer's tree trimmers and crew leaders employed by the Employer on AEP property in its Columbus, Ohio service area, excluding all employees employed in the Newark service area, all other employees, and all professional employees, guards and supervisors as defined in the Act is appropriate for purposes of collective bargaining. *Southwest Gas Corporation*, supra; *United Gas, Inc.*, 190 NLRB 618 (1971). In reaching this conclusion, I note that the Petitioner has not cited any precedent for the inclusion of the Newark employees.

#### **STIPULATED SUPERVISION:**

In accord with the stipulation of the parties and the record evidence, I shall exclude Mike Hexamer, area manager; Wesley Washington, general supervisor; John Gibson, general supervisor; Tony Bennington, general supervisor; Rodney Phillips, supervisor; Gary Howard, supervisor; Jim Bentz, supervisor; Kevin Gibson, supervisor; Erwin Kempton, supervisor; Mike Helterbridle, supervisor; Gary Finnicum, supervisor; Ron Beatty, supervisor; Robert Helterbridle, supervisor; Dan Sullivan, supervisor; Paul Tripp, supervisor; Merlin Pritt, supervisor; Neil Hunt, supervisor; Russ Wade, supervisor; L.D. Rose, assistant supervisor; Doug Smith, assistant supervisor; Clayton Rhodes, assistant supervisor; Matt Knisely, assistant supervisor; J.B. Heflin, assistant supervisor; Tony Helterbridle, assistant supervisor;

Jurgen Robson, assistant supervisor; John Polen, assistant supervisor; and Jeff Lough, assistant supervisor, from the unit as supervisors within the meaning of Section 2(11) of the Act.

Based on the foregoing, the record as a whole and after careful consideration of the arguments of the parties at the hearing and in the Employer's brief, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining:

**All tree trimmers and crew leaders employed by the Employer on American Electric Power property in the Employer's Columbus, Ohio contract service area, excluding all permission/ticket employees, customer call runners, all office clerical employees, all employees employed in the Employer's other contract service areas, including the Newark/Zanesville area, the transmission crew employees, and all professional employees, guards and supervisors as defined in the Act.**

Accordingly, I shall direct an election among the employees in such unit.

#### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **International Brotherhood of Electrical Workers, Local 71**.

#### **LIST OF ELIGIBLE VOTERS**

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters using full names, not initials, and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB No. 359 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision

2 copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in Region 9, National Labor Relations Board, 3003 John Weld Peck Federal Building, 550 Main Street, Cincinnati, Ohio 45202-3271, on or before July 1, 1999. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by July 8, 1999.

Dated at Cincinnati, Ohio this 24<sup>th</sup> day of June 1999.

*/s/ Laura E. Atkinson*

Director

Laura E. Atkinson, Acting Regional

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